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IN THE

Supreme Court of the United States

OCTOBER TERM 1969

No. 352

JOHN N. STICE,

Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF KANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

John N. Stice, *pro se*
9111 Gail Court
Thornton, Colorado 80229

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STATE BOARD OF BAR EXAMINERS
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Respondent.

PETITION FOR WRIT OF CERTIORARI

The petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Kansas entered on April 16, 1969.

CITATIONS TO OPINIONS BELOW

The opinions of the Supreme Court of Kansas have not been printed in either the official *Kansas Reports* or in the unofficial *Pacific Reporter*. The opinion of the State Board of Bar Examiners of the State of Kansas and the majority and minority opinions of the panel of the State Board of Bar Examiners of the State of Kansas have not been printed. Copies of these five opinions are in Appendix A.

JURISDICTION

The opinions of the Supreme Court of Kansas were dated February 28, 1969 and April 16, 1969. No order granting any extension of time within which to petition for certiorari has been entered. The jurisdiction of this Court is invoked under 28 *U.S.C.* §1257(3).

QUESTIONS PRESENTED

1. Whether, as a matter of due process, the Board of Bar Examiners and the Supreme Court of Kansas may require the petitioner by "overwhelming proof" to overcome the decision of the Supreme Court of Kansas rendered ten years ago in the case of *In re Stice,* 184 Kan. 589, 339 P.2d 29 (1959) whereas the only issue specified in Rule 208 of the *Rules of the Supreme Court of Kansas* was whether the petitioner has rehabilitated himself.

2. Whether, as a matter of due process, the Board of Bar Examiners and the Supreme Court of Kansas may require the petitioner to confess guilt as a condition precedent to any determination of rehabilitation and as a condition precedent to reinstatement as a member of the Kansas bar.

CONSTITUTIONAL PROVISIONS AND RULES

The constitutional provision involved is *U.S. Const.* amend. 14. The Kansas rule involved is Rule 208 of the *Rules of the Supreme Court of Kansas.* This constitutional provision and this rule are in Appendix B.

STATEMENT

The Supreme Court of Kansas disbarred the petitioner, John N. Stice, on May 16, 1959: *In re Stice,* 184 Kan. 589, 339 P.2d 29 (1959). During the next ten years, from 1959 to 1969, the petitioner sought reinstatement by peti-

tions filed on July 6, 1962, October 14, 1964, and July 28, 1967. The Supreme Court of Kansas summarily denied these petitions without hearing. In June 1968, the petitioner again filed a petition for reinstatement. The Supreme Court of Kansas referred the June 1968 petition to the State Board of Bar Examiners of the State of Kansas; the Board considered the petition on June 24, 1968 and appointed a three-member panel to conduct a hearing. The panel had its hearing on September 4, 1968. Two members of the panel voted against reinstatement, and one member voted for reinstatement. The Board on February 10, 1969 affirmed the majority opinion of the panel, and the Supreme Court of Kansas on February 28, 1969 affirmed the opinion of the Board. The Supreme Court of Kansas on April 16, 1969 denied the petitioner's petition for rehearing.

The majority opinion of the panel, adopted by the Board and by the Supreme Court of Kansas, stated that for reinstatement the petitioner must show "overwhelming proof of reform," an insurmountable burden that exceeds a preponderance of the evidence, clear and convincing proof, or even proof beyond a reasonable doubt. "Overwhelming proof" is not consonant with due process of law.

Moreover, the majority opinion of the panel, adopted by the Board and by the Supreme Court of Kansas, held that the petitioner must confess himself guilty of the grounds for his disbarment in 1959. To demand that the petitioner recant, like Galileo, as the *sine qua non* to his readmission to the bar is a denial of due process of law.

WHEN FEDERAL QUESTIONS RAISED

The petitioner raised these federal questions in his exceptions to the opinion of the Board, which he mailed to the Supreme Court of Kansas on February 19, 1969, and in

his petition for rehearing filed with the Supreme Court of Kansas. Portions of the record here relied upon are in Appendix C.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Kansas in this case has decided two substantial questions of federal due process as applied to state proceedings. First, the Kansas court has ruled that "overwhelming proof" is mandatory in applications of disbarred lawyers for reinstatement, a burden on the petitioner even heavier than the burden on the prosecution in a criminal case. Second, the Kansas court has required the petitioner, as a condition precedent to his reinstatement in 1969, to confess that he was guilty of the grounds for his disbarment in 1959 and to repent his guilt. These two views of the Kansas Supreme Court contravene the due process of law mandated by the Fourteenth Amendment to the *United States Constitution: Spevack v. Klein,* 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967); *Schware v. Board of Bar Examiners,* 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957); *In re Ruffalo,* 390 U.S. 544, 88 S.Ct. 623, 99 L.Ed.2d 117 (1968).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,
John N. Stice, *pro se.*
9111 Gail Court
Thornton, Colorado 80229

APPENDIX A: Opinions of the Supreme Court of Kansas, Opinion of the State Board of Bar Examiners of the State of Kansas, Majority Opinion of Panel of the State Board of Bar Examiners of the State of Kansas, and Minority Opinion of the Panel of the State Board of Bar Examiners of the State of Kansas

IN THE SUPREME COURT OF THE STATE OF KANSAS

Accusation in Disbarment against John N. Stice
v. } No. 40,733

You are hereby notified of the following action taken in the above entitled case:
Petition of accused for reinstatement and readmission to the Kansas Bar, DENIED.

Yours very truly,
JAMES R. JAMES
Clerk, Supreme Court

April 16, 1969

IN THE SUPREME COURT OF THE STATE OF KANSAS

In the Matter of the Petition for Reinstatement and Readmission to the Kansas Bar of John N. Stice } No. 40,733

ORDER

Upon consideration of the report of the State Board of Law examiners submitted February 10, 1969, and the entire record in this proceeding, it is CONSIDERED, ORDERED and ADJUDGED that the application of the

petitioner, John N. Stice, for reinstatement and readmission to the Bar of the State of Kansas be, and the same is hereby denied.

BY ORDER OF THE COURT

Dated at Topeka, Kansas, this 28th day of February, 1969.

IN THE SUPREME COURT OF THE STATE OF KANSAS

In the Matter of the Petition for Reinstatement and Readmission to the Kansas Bar of John N. Stice } No. 40,733

To the Honorable, the Justices of the Supreme Court:

The State Board of Law Examiners respectfully reports:

The petition of the applicant for reinstatement was considered by the Board at its meeting on June 24, 1968.

That a panel of three members was appointed by the Board and a hearing conducted on September 4, 1968, in Wichita, Kansas; that the petitioner appeared in person at that hearing and presented all evidence, both oral and documentary, which he desired.

That after due consideration the panel appointed by the Board as a whole rendered its memorandum decision attached, stating the following Findings and Conclusions:

"1. Petitioner has failed to establish the averments of his application by clear and convincing evidence.

"2. Reinstatement of petitioner at this time is not compatible with the public interest."

and making the following Recommendation:

"1. The petition for reinstatement be denied."

A copy of the memorandum decision is attached hereto.

That one of the members of the panel filed his dissenting opinion in which he recommends as follows:

> "I would recommend reinstatement effective at the end of ten years after the date of disbarment, which was May 15, 1959."

A copy of the dissenting opinion is attached hereto.

That the opinions were discussed and the matter fully examined by the Board as a whole at its meeting on February 10, 1969, and it was the unanimous opinion of the Board, (the chairman not voting, as is our usual practice except in the case of a tie vote), that the recommendation of the majority of the panel be adopted by the Board and that the Board recommend to the Court and does hereby recommend to the Court that the petition of John N. Stice denied.

Respectfully submitted this 10th day of February, 1969.

STATE BOARD OF LAW EXAMINERS

Re: *Application of John N. Stice for Reinstatement*

MEMORANDUM DECISION

The petition for readmission was heard by a panel of three members of the Board of Law Examiners at Wichita, Kansas, on September 4, 1968, pursuant to notice.

Petitioner appeared in person. The State of Kansas appeared by Richard Seaton, Assistant Attorney General. The Wichita Bar Association appeared at the invitation of the Chairman by Arthur Johnson, Chairman of the Ethics and Grievance Committee.

Evidence was offered by petitioner and by the State of Kansas. *The Wichita Bar Association offered no evidence and announced that it made no recommendation.*

Controlling Principles on Application for Reinstatement

The practice of law is a privilege. It is the duty of the Board of Law Examiners to be satisfied that all applicants for a license are of good moral character. (Rule 210(b), Rules of the Supreme Court of Kansas.)

On application for reinstatement, the burden is upon the applicant to establish the requisite facts for eligibility "by clear and convincing evidence." (Rule 208, Rules of the *Supreme Court* of Kansas.)

In determining the issue of moral character on an application for reinstatement the nature and character of the conduct which gave rise to the original disbarment is always pertinent and the seriousness of the offense is frequently given controlling weight. (70 A.L.R.2d 268, Reinstatement of Attorney, §14, p. 288 and cases there cited.) It is frequently stated that a judgment disciplining or disbarring an attorney is conclusive evidence of the lack of moral character at the time of the conduct giving rise to the order. *(In re Keenan,* 47 N.E.2d 12 [Mass. 1943].)

It thus appears that the *former adverse adjudication of applicant's character must be overcome by clear and convincing evidence.*

> "In other words, in an application for reinstatement, although treated by the court as a proceeding for admission, the proof presented must be *sufficient to overcome the court's former adverse judgment of applicant's character." (Kepler v. State Bar of California,* 13 P.2d 509, 510. [Cal. 1932].)
>
> (Syl. 4) "A court should be slow to disbar, but even more cautious in reinstating an attorney to a position of trust, requiring stronger proof of

good moral character and trustworthiness than in an original admission, since *it must be sufficient to overcome court's former adverse judgment of applicant's character." (In re Smith,* 19 N.W.2d 324 [Minn., 1945].)

(Syl. 3) "Attorney, disbarred for acts involving high degree of moral turpitude, should be reinstated only on clear and convincing evidence amounting to *overwhelming proof of reform, based on conduct sufficient time after disbarment to show such reform." (Petition of Morganstern,* 259 Pac. 90 [Cal. 1927].)

The decision of the court should be governed primarily by *consideration of the public interest* in determing whether or not to restore a disbarred attorney to the position of trust and confidence.

". . . the court's action will depend, generally speaking, on whether or not it decides that the *public interest in the orderly and impartial administration of justice* will be conserved by the applicant's participation therein in the capacity of an attorney and counselor at law." (70 A.L.R. 2d 268, Reinstatement of Attorney, §11, p. 283.)

"The sole object of the court, upon an application by an attorney previously disbarred for reinstatement to practice, is to determine whether or not the character of the applicant is such that he should be admitted to an office of trust, and recommended to the public as a trustworthy person, fit to be consulted by others in matters of confidence." *(Kepler v. State Bar of California,* 13 P.2d 509, 510 [Cal. 1932].)

Since disbarment is not intended as punishment but is invoked in the public interest, matters of sufficiency of punishment and hardship appear to be irrelevant. (In re Simpson, 93 N.W. 918 at 919 [N.D., 1903].)

> "The disbarment of an attorney is not intended primarily as punishment, but as a measure of protection for the public and the bar, and therefore a belief that the attorney has been sufficiently punished will not warrant his reinstatement." (70 A.L.R.2d 268, Reinstatement of Attorney, §17, p. 291.)
>
> (Syl. 2) "Purpose of disbarment proceeding against attorney is not primarily to punish him, but to determine in public interest whether he should be permitted to practice law." *(State v. Priest,* 242 N.W. 433 [Neb. 1932].)
>
> "The question is not whether the respondent has been 'punished' enough. To make that the test would be to give undue weight to his private interests, whereas the true test must always be the public welfare. Where any clash of interest occurs, whatever is good for the individual must give way to whatever tends to the security and advancement of public justice." *(In re Keenan,* 50 N.E.2d 785, 787 [Mass. 1943].)

The general statements of the elements of essential proof by the applicant for reinstatement appear to be accurately characterized by the recent A.L.R. annotation as follows:

> "The conditions that must be fulfilled for reinstatement to the bar, all leading up to the establishment of a present fitness to practice law, include not only a full disclosure by the applicant and a showing that reinstatement

would be in the public interest, but also a showing that the applicant is now of good moral character, has reformed or become morally rehabilitated, and is mentally qualified for readmission, the burden of proving the fulfillment of such requirements resting upon the applicant." (70 A.L.R.2d 268, Reinstatement of Attorney, §19, p. 294.)

THE EVIDENCE

In support of his application, petitioner offered the testimony of six practicing Wichita lawyers, each of whom recommended reinstatement and most of whom testified that in their opinion reinstatement would not be contrary to the public interest or the administration of justice. Some of these witnesses testified that reinstatement would have no adverse effect upon the community attitude toward the integrity of the bar. Others were of the opinion that there would be minimal adverse effect upon the general reputation of the bar.

These attorneys testified generally that they knew of no adverse reports concerning petitioner's character or conduct since the time of his disbarment.

It is noted that all aformentioned witnesses are contemporaries of the petitioner. Most of them were law school acquaintances. Several of them were closely associated with petitioner socially or professionally prior to the events which gave rise to the disbarment proceedings. Most of them testified on his behalf at the prior hearings. None has had any close contact or other real basis upon which to form an opinion concerning the petitioner, his conduct, his possible rehabilitation or moral character and reputation since the date of disbarment.

They candidly acknowledged that their opinions and

recommendations are based primarily upon their acquaintance with and respect for petitioner prior to the disbarment proceedings and the absence of any known transgressions since that time.

O'Hara stated his opinion and recommendation was based upon his association with petitioner prior to the disbarment and "in spite of the Supreme Court opinion." He "thought at that time and now that he never should have been disbarred." (R. 47.)

Carnahan testified his opinion is "the same as always." He did not believe the prior finding. (R. 106.)

Others were careful to point out that they did not know the nature of the evidence in the disbarment proceedings and accordingly have not altered their prior opinion of petitioner.

None of the attorneys testified to any facts or opinions tending to show rehabilitation. The most frequently articulated basis for the recommendations of reinstatement of the Wichita lawyers was that the "punishment has been adequate."

Witness Marks, a Colorado District Attorney, and witness Gagnon, a newsman, were strong advocates for reinstatement. Each has had an opportunity to observe petitioner with some regularity for the last several years. They testified that petitioner works hard, diligently pursues his current occupation, and indicated considerable confidence in his capability. Neither has found reason seriously to question petitioner's integrity although they acknowledge that controversies have arisen in Colorado on at least two occasions where the propriety of petitioner's actions as a private investigator have been questioned. The witnesses discount these matters and the evidence does not clearly establish unethical conduct.

The evidence discloses the reputation of petitioner is not good among older members of the Jefferson County Sheriff's Office and they do not have confidence in his integrity. It is impossible to determine from the evidence how much of this is the direct result of petitioner's own conduct and how much results from his close relationship with former Jefferson County Sheriff, Wermuth, who ran afoul of the law.

In summary, the evidence tends to establish that petitioner has made a diligent effort to make a livelihood for himself and his wife since he went to Colorado shortly after his disbarment and that he has been reasonably competent in the performance of his work. His reputation in Colorado is mildly but not seriously clouded. Some attorneys in Wichita who held him in esteem before the disbarment action did not change their opinions as a result of that decision and continue to have confidence in him based upon their prior contacts and notwithstanding the decision of the Supreme Court and without any real knowledge of petitioner's conduct in recent years.

There is no evidence, even in petitioner's own testimony, of an acknowledgment of wrongdoing or repentance. Neither is there any recognition by him or the witnesses who recommend reinstatement that rehabilitation was required or has occurred or that a different understanding or attitude toward the obligations of a licensed attorney or an elected judge has been adopted by petitioner. The evidence does disclose that the price paid by a disbarred lawyer is severe in terms of obtaining and keeping gainful employment in pursuits which require confidence and integrity, and petitioner now recognizes that fact.

The evidence is creditable as far as it goes and appears to establish that the witnesses who testified on behalf of the applicant believe in his integrity and fitness to resume

the practice of law. But most if not all of them have never held a belief to the contrary.

When the substance of the evidence is examined rather than the number of witnesses, it appears to hold forth no basis for the conclusion that if the privilege of a license were again extended to the petitioner he would not again fall victim to the same weakness that was his first undoing and gave rise to the initial judgment of the court.

There is no indication of repentance or reform. The evidence falls far short of establishing clearly and convincingly a present moral character of the kind required of one who is to be vouched for by the Supreme Court as fit for a position of trust and confidence.

The prior adjudication is not overcome by the evidence at hand. The suffering of punishment and personal hardship are not elements to be considered or must at least yield to the paramount welfare and interest of the public.

When the matter is considered in the light of the findings and conclusions of the Commissioner as adopted and approved by the Supreme Court of Kansas after a full review of the record (*In re Stice*, 184 Kan. 589, 339 P.2d 29), it is impossible to avoid the conclusion that reinstatement of the petitioner would be contrary to the public interest, harmful to the administration of justice, and would lower confidence in the integrity of the courts and the bar.

Findings and Conclusions

1. Petitioner has failed to establish the averments of his application by clear and convincing evidence.

2. Reinstatement of petitioner at this time is not compatible with the public interest.

Recommendation

1. The petition for reinstatement be denied.

Respectfully submitted,

STATE BOARD OF LAW EXAMINERS

Re: Application of John N. Stice for Reinstatement

DISSENTING OPINION

I regret that I am in disagreement with the ultimate Findings and Conclusions and Recommendation of the other members of the panel.

In the main, the facts, issues and controlling principles are accurately and fairly stated. Reference is made to two occasions "where the propriety of petitioner's actions as a private investigator have been questioned. The witnesses discount these matters and the evidence does not clearly establish unethical conduct." I attach no importance to either of these matters. One related to an occasion when at the direction of an attorney for whom he was investigating a case, Stice took a picture of a prisoner in the county jail — but so did several news photographers and T-V photographers in Denver. On the other occasion Stice, by appointment, went to Pueblo at the direction of a Denver lawyer for whom he was investigating a criminal case to interview the complaining witness. The witness proved to be an officer of the Pueblo police department. He asked Stice for his identification, and Stice exhibited the contents of his billfold, which included a badge as a security officer of Denver University, a badge as an investigator for the District Attorney of the 17th Judicial District which had Stice's name on it, his driver's license, and his cards as a member of the Shrine and Consistory. From this, apparently the officer reached the unauthorized con-

clusion that Stice was holding himself out to be investigating the criminal case for the District Attorney of the 17th District. (The criminal case was pending in Denver but in another district.) Stice was not arrested but accompanied the officer to the police station, where he was again questioned, showed the same cards and was released. No charge was ever filed against him.

It is said that Stice's reputation is not good among older members of the Denver County Sheriff's office. One witness, Ray Kechter, now the chief investigator for the District Attorney of the First Judicial District of Colorado, so testified. As I view the facts, when Stice went to Colorado as a disbarred attorney he experienced difficulty in obtaining employment. The Sheriff of Jefferson County at that time was a former Wichitan, Art Wermuth, with whom Stice had been acquainted in Wichita. He gave Stice a job as a deputy. At that time, Kechter was also on Wermuth's staff. In common with most members of the staff, Kechter disliked and mistrusted the Sheriff, Wermuth, who was subsequently convicted of a misdemeanor and resigned.

As to Stice's reputation among law enforcement officers, Kechter testified:

"Q What do you consider that reputation to be?

A After some conversations and comments concerning Mr. Stice over a period of years, generally the feeling of local law enforcement officers is one of a general mistrust.

Q Is this—what is the reason for this?

A Well, I think it goes back a number of years that Mr. Stice was brought into the Sheriff's office there, and through no fault of his own he was somewhat

branded with the previous association of the Sheriff who was then Art Wermuth.

Q His previous association with Wermuth?

A Yes.

Q In Wichita?

A In Wichita, and I think it was generally the feeling of mistrust among the men who felt that Jack was working with them, they did not feel that they could convey certain information to him for fear that it would be returned to the Sheriff.

Q They mistrusted the Sheriff, I take it?

A That was generally the feeling at that time. There was some conflict in this period of time involving our local Sheriff and it was a deal of unrest, and at that time I think this was the cause, as I say, through no fault of Mr. Stice. But nevertheless the feeling did exist.

. . .

Q But it was some years ago, about seven or eight years ago?

A That was 1960.

Q Does this reputation or feeling of mistrust continue, or has it abated?

A It has continued among many of the officers at the Jefferson County Sheriff's office.

Q But you wouldn't hire him as a police officer?

A Based upon current law enforcement standards, based upon his past reputation of things gone by that I would be in a position to hire him as a full time law enforcement officer.

A Well, it's based upon, quite frankly, his previous situation involved here in Wichita.
(Pp. 171, 172, 174)

I find nothing in the record to his discredit since he took up residence in Colorado in 1960. During that time he has made a commendable and diligent effort to support his family. True he has had several jobs, many of them, such as a "bouncer" in a night club, being undesirable and no doubt distasteful to a man of his former social status, but as a disbarred attorney, he could not pick and choose among job openings. He has, however, gradually been admitted into positions of trust and confidence in the general area of law enforcement and investigations for lawyers. He was a deputy sheriff in Jefferson County, Colorado, for nine months. He left that position to accept a position with the Department of Employment of the State of Colorado. He still holds a position as a security officer for Denver University, which by reason of sensitive work or experiments being done at the university, required clearance by the F.B.I. He is still on the staff of the District Attorney for the 17th Judicial District of Colorado as an investigator. The District Attorney testified before the panel that if Stice is readmitted to the bar, he will employ him as a trial lawyer.

To my mind, proof of this nature is at least one proper way to establish that the disbarred attorney has "rehabilitated himself."

> "Thus, declaring that in reality rehabilitation is only that status which must immediately result, not from any words, acts, or creditable conduct of a disbarred attorney, but rather from that which flows from an order or judgment of the court by which such attorney is restored to his former good standing and reinvested with the

> powers and dignities with which theretofore he had been authoritatively clothed, the court in re: Andreani (1939) 14 Cal 2d 736, 97 P2d 456, said that in reaching a fair conclusion on the question of reformation in such a matter which may only be brought about by the individual himself, the favorable testimony of acquaintances, neighbors, friends, associates, and employers with reference to their observation of the daily conduct and mode of living of an attorney who has suffered disbarment should weigh heavily in the scale of justice."
> 70 ALR2d, 322.

It is said that there "is no indication of repentance or reform." I do not know what additional proof could be offered except Stice's self serving testimony to such effect, which would to me at least weaken his entire position. While we must and do accept his guilt of the offenses for which he was disbarred, Stice has never admitted his guilt.

> "In Ex parte Marshall (1933) 165 Miss 523, 147 So 791, the syllabus by the court is to the effect that in determining the moral character of a disbarred attorney seeking reinstatement, the opinion of the public, when settled and deliberate, is the highest evidence thereof, and to the further effect that the fact that a disbarred attorney seeking reinstatement refused to go into the matter involved in the disbarment trial was not an indication of insufficient repentance, where to do so would require the admission that he committed the criminal offense."
> 70 ALR2d, 323.

It is quite true that sufficiency of the punishment and sympathy "do not constitute sufficient basis for reinstate-

ment" although at least one case holds "they may be helpful in arriving at a correct decision." (70 ALR2d 291, Sec. 17.) The time element, however, is mentioned in many decisions.

> "The time that has elapsed between a disbarment or suspension and an application for reinstatement is not only a matter for the consideration of the court on the hearing of such application, as mentioned in §11, supra, but has also been held, in specific cases, insufficient to justify reinstatement, since courts will not ordinarily reinstate an attorney when his petition for reinstatement follows closely upon his disbarment."
> 70 ALR2d, 289-90.

I have not found a comparable case where reinstatement has been denied after ten years.

I would recommend reinstatement effective at the end of ten years after the date of disbarment, which was May 15, 1959.

APPENDIX B: Constitutional Provisions and Rules

U.S. Const. Amend. 14:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Rule 208 of the *Rules of the Supreme Court of Kansas:*

Rule No. 208
REINSTATEMENT PROCEDURE

Any attorney who shall have been disbarred or suspended may, by verified petition, apply for: (a) an order of reinstatement; (b) an order shortening the term of a fixed period of suspension; or (c) an order modifying an order of indefinite suspension by fixing a definite period of suspension. Such petition shall bear the case number and caption appearing in the order of discipline, and an original and one copy thereof shall be filed with the Clerk of this Court and by him filed and made a part of the record in said case. Such petition shall set forth facts showing that the attorney has rehabilitated himself, or that he is entitled to have the order of discipline vacated, terminated or modified.

On receipt of such petition, the Clerk shall immediately forward a copy thereof to the board, which shall consider the same and report to the Court in duplicate its findings, conclusions and recommendation. The proceedings before the board relating to such petition shall be governed by the applicable provisions of these rules governing hearings in disciplinary proceedings, and the burden shall be upon an applicant seeking reinstatement to establish the averments of his application by clear and convincing evidence. The Clerk, on receipt of such report, shall mail a copy thereof to the respondent attorney.

If the report of the board recommends denial of the petition, the attorney shall have fifteen (15) days from the date of mailing of such recommendations to file with the Clerk exceptions thereto. Whereupon, the matter shall stand submitted. If the report recommends reinstatement, termination or modification of suspension, the matter shall stand submitted for consideration on the report alone. Neither briefs nor oral argument shall be permitted, unless

requested by the Court. The board upon request of the petitioner and payment of the actual cost thereof, shall certify to the Court the complete record of the proceedings before the board on the application for reinstatement, which record will be considered by the Court in disposing of the petition. The Court shall make such order as it deems proper.

APPENDIX C: Portions of the Record Showing When Federal Questions Raised

(1) Excerpts from petitioner's exceptions to the opinion of the Board:

In its Memorandum Decision, the two-member majority of the panel cited a California case, *Petition for Morganstern*, holding that a disbarred lawyer petitioning for reinstatement must show "overwhelming proof of reform." "Overwhelming proof" is proof beyond a reasonable doubt or perhaps even proof beyond any doubt. The law of Kansas, unlike the law of California, requires only that the evidence be clear and convincing. The Petitioner respectfully excepts to the "overwhelming proof" test adopted by the majority panel members. . . .

The majority [of the panel] dwelled on one particular point:

> "There is not evidence, even in the Petitioner's own testimony, of an acknowledgment of wrongdoing or repentance * * * There is no indication of repentance * * * or reform * * * "

It is true that the Petitioner sincerely feels that his disbarment was totally unjust and that he was innocent of all charges against him. As a matter of conscience, as a matter of duty to himself, the Petitioner cannot now, ten (10) years after disbarment, confess guilt that in his mind and heart never existed. The Petitioner does, however, agree

with [the] comment in Chairman J. B. McKay's dissenting opinion that the Board and the Court, "must accept his guilt of the offenses for which he was disbarred." Even so, to require the Petitioner to confess as a condition precedent to reinstatement, to demand that he recant, like Galileo, as the *sine qua non* to his readmission to the bar, is not only unreasonable but also is a denial of the due process of law: *Spevack v. Klein,* 385 U.S. 511, 87 S. Ct. 625, 17 L Ed 2nd 574 (1967) Rule 208 [of the *Rules of the Supreme Court of Kansas*] does not require confession or recantation; the rule requires only rehabilitation, and the evidence of rehabilitation is the Petitioners conduct during the last ten (10) years.

From reading the final paragraphs of the [panel] majority's Memorandum Decision, from reading the [panel] majority's conclusions, two misconceptions appear. First, the majority obviously did feel that the Petitioner should have confessed guilt if he were to deserve reinstatement. If confession were a prerequisite, then lawyers who were guilty and confessed would stand a better chance for reinstatement than lawyers who were innocent and declined to confess. Second, while the Petitioner's purpose was to establish rehabilitation, the two-member majority felt that the "prior adjudication (necessarily had to be) overcome by the evidence at hand" and that "the matter (must be) considered in the light of the findings and conclusions of the Commissioner as adopted and approved after a full review of the record (in the case of) In Re Stice, 184 Kan, 589, 339 P 2nd 29." Thus the majority required the Petitioner by "overwhelming proof" to overcome the decision rendered ten (10) years ago. Even though he feels that the decision ten (10) years ago was mistaken, the Petitioner realizes that it is *res judicata;* and in applying for reinstatement, he asked the panel and the Board and now asks the Court to consider the evidence of his rehabilitation and to

apply the test of rehabilitation in the true meaning and spirit of Rule 208. [*Sic.*]

(2) Excerpt from petitioner's petition for hearing before the Supreme Court of Kansas:

AS GROUNDS FOR THIS PETITION, he shows the Court that the Court in affirming the Memorandum Decision of the two-member majority of the panel, denied the Petitioner his due process of law guaranteed by the Fourteenth Amendment to the *United States Constitution,* in that:

(1) The Court required the Petitioner by "overwhelming proof" to overcome the decision rendered ten years ago in the case of *IN RE STICE, 184 KANS. 589, 339 P. 2nd 29 (1959),* whereas the only issue as provided by Rule 208 of the *Rules of The Supreme Court of Kansas,* was whether the Petitioner had rehabilitated himself.

(2) The Court required the Petitioner to confess guilt as a condition precedent to reinstatement.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 352

JOHN N. STICE,
Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF KANSAS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

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JOHN N. STICE,
Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF KANSAS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

The petitioner seeks a writ of certiorari to the Supreme Court of Kansas to review the order of that Court entered February 28, 1969, denying his application for reinstatement and readmission to the bar of the state of Kansas.

OPINIONS BELOW

The order of the Kansas Supreme Court denying reinstatement appears in the record at page 32 and is printed in the appendix to the petition. The report of the State Board of Law Examiners to that Court on petitioner's application is printed in the record beginning at page 7 and likewise appears in the appendix to the petition. This report includes, as attachments, the majority and dissenting opinions of the three-member panel appointed to hear the evidence regarding petitioner's application.

JURISDICTION

The petitioner seeks to have this Court accept jurisdiction under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Is a standard for readmission to the bar requiring "clear and convincing" evidence of rehabilitation of moral character after disbarment consistent with the requirements of due process?

2. Can the petitioner ask this Court to review the evidentiary support for the finding below against him, when he has not included in the record before the Kansas Supreme Court or this Court any of the evidence received at the hearing on his application for readmission?

RULE INVOLVED

Rule No. 208 of the Kansas Supreme Court, relating to reinstatement procedure, is printed in the appendix to the petition.

STATEMENT OF FACTS

The petitioner John N. Stice was disbarred in the Supreme Court of Kansas on May 16, 1959. *In re Stice,* 184 Kan. 589, 339 P.2d 29 (1959). See also *State ex rel.* v. *Stice,* 186 Kan. 69, 348 P.2d 833 (19....). The Court's opinion discloses the findings against him in that proceeding. Thereafter he filed three applications with the Court for reinstatement, all of which were considered by the Court and denied without hearing or opinion. On May 21, 1968, the Court adopted new and revised rules relating to the discipline of attorneys. 201 Kan. XLVII. When petitioner filed his present application for reinstatement in June of 1968, the Court, pursuant to its new rules, referred the application to the State Board of Law Examiners. Also pursuant to these rules, the Board assigned a three-member panel to conduct a hearing, which was had on September 4, 1968. At this hearing the petitioner appeared in person and presented evidence. An assistant attorney general appeared in opposition to reinstatement and also presented evidence, both testimonial and documentary. Thereafter the panel voted two-to-one against reinstatement. The majority's report to the full Board, as well as the dissenter's opinion, appear in the appendix to the petition for certiorari. The full Board, on February 10, 1969, adopted the majority opinion and made its report to the Court, recommending that the Court deny the petition for reinstatement. (R. 7). Its report likewise appears in the appendix to the petition. The court denied the application in a brief order on February 28, 1969.

Rule No. 208 of the Kansas Supreme Court (see Appendix to petition) provides that upon request of the petitioner for reinstatement and payment of the actual costs thereof, the Board shall certify to the Court the complete record of the proceedings had on the application for reinstatement.

The petitioner never did this in the present case, and consequently the evidence heard by the three-member panel of the Board was not before the Supreme Court. Likewise, this evidence is not part of the record in this Court.

REASONS CERTIORARI SHOULD BE DENIED

The Kansas Standards for Readmission After Disbarment Are Reasonable and Do Not Contravene Due Process.

The opinion by the majority of the hearing panel, which was adopted by the full Board and apparently by the Supreme Court, states that the standard which it is applying is "that the *former adverse adjudication of applicant's character must be overcome by clear and convincing evidence.*" This standard is in turn based on Rule 208 of the Kansas Supreme Court (See appendix to petition) which provides that "the burden shall be upon an applicant seeking reinstatement to establish the averments of his application by clear and convincing evidence." The same rule also provides that a petition for reinstatement "shall set forth facts showing that the attorney has rehabilitated himself, or that he is entitled to have the order of discipline vacated, terminated or modified." Applying this standard, the majority of the hearing panel said in its opinion that "the evidence falls far short of establishing clearly and convincingly a present moral character of the kind required of one who is to be vouched for by the Supreme Court as fit for a position of trust and confidence." The majority repeated this standard once again in its final findings and conclusions.

Petitioner suggests that the Kansas Supreme Court requires "overwhelming proof" by a petitioner for reinstatement. However, he lifts this phrase out of context from a quotation in the majority opinion from a 1927 California case. It is apparent from an examination of the

majority opinion that this phrase by itself was not made the standard by which petitioner's evidence was judged. Petitioner also suggests that the Kansas Court required that he confess to his guilt of the charges made in 1959 before he could be reinstated. However, while it is clear that the majority considered lack of repentance to be relevant, it is also clear that it did not consider this to be the controlling standard. The controlling standard was clear and convincing evidence of rehabilitation of petitioner's moral character. After all, paragraphs two and three of the petition for readmission itself allege petitioner's rehabilitation and repentance as grounds for readmission. The petitioner has never attempted in this proceeding to rebut the evidence supporting his disbarment ten years ago.

The controlling standard applied in petitioner's case, then, was a reasonable one and raises no question of procedural due process. It does not run afoul of the holding of *Spevack* v. *Klein*, 385 U.S. 511 (1967), that the self-incrimination clause of the Fifth Amendment has been absorbed in the Fourteenth and protects lawyers as well as other individuals, and that disbarment may not be imposed as the price of asserting it. Respondent has no quarrel with this principle, nor with the holdings in the other two cases cited by petitioner: *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 (1957), and *Re Ruffalo*, 390 U.S. 544 (1968). The *Schware* case holds that:

> A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. . . . Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible

> standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. . . . (253 U.S. at 239).

The Kansas standard requiring clear and convincing evidence of rehabilitation of moral character clearly has a rational connection with the fitness of petitioner to be readmitted to the Kansas Bar. The *Ruffalo* case deals with the due process requirement of notice and has no application here.

This Court has previously recognized the importance of leaving states free to select their own bars, so long as this power is not exercised arbitrarily or in a discriminatory manner or in a way to impinge upon freedom of expression or association. *Konigsberg* v. *State Bar of California,* 353 U.S. 252, 273 (1957). In the present case, the state standards for judging fitness for readmission to the Bar fall well within these limitations.

Nor can it be suggested here that there is no reasonable basis in the record for the finding that petitioner failed to satisfy the standard of clear and convincing evidence of rehabilitation. *Cf. Schware* v. *Board of Bar Examiners, supra.* The record before the Supreme Court of Kansas and in this Court simply does not contain the evidence heard by the three-member panel. Although the petitioner had a right under the rules of the Kansas Supreme Court to include all of this evidence in the record he elected not to do so. Under these circumstances, he may not be heard to complain that the record does not support the findings against him.

CONCLUSION

For the above reasons, the claims of petitioner that he was denied due process are wholly insubstantial and the writ of certiorari should be denied.

Respectfully submitted,

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